

Treaty
establishing the
Energy Community

Draft - Final Version

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The Parties, being:

The European Community on the one hand,

And

The following Contracting Parties on the other hand:

- The Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia, the Republic of Turkey (hereafter referred to as the Adhering Parties),

and

- The United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244,

Consolidating on the Athens Process and the 2002 and 2003 Athens Memoranda of Understanding,

Noting that the Republic of Bulgaria, Romania, the Republic of Turkey and the Republic of Croatia are Candidate Countries for accession to the European Union, and that the former Yugoslav Republic of Macedonia has also applied for membership.

Noting that the Copenhagen European Council in December 2002 confirmed the European perspective of the Republic of Albania, Bosnia and Herzegovina, and Serbia and Montenegro, as potential candidates to the accession of the European Union, and underlined the determination to support their efforts to move closer to the European Union,

Recalling that the European Council in Thessaloniki in June 2003 endorsed “The Thessaloniki Agenda for the Western Balkans: moving towards European integration”, which aims to further strengthen the privileged relations between the EU and the Western Balkans and in which the European Union encouraged the countries of the region to adopt a legally binding South-East Europe energy market agreement,

Recalling the Euro-Mediterranean Partnership Process and the European Neighbourhood Policy,

Recalling the contribution of the Stability Pact for South East Europe that has as its core the need to strengthen co-operation amongst the states and nations of South East Europe and to foster the conditions for peace, stability and economic growth,

Resolved to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity,

Considering that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures.

Determined to create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability,

Determined to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

Recognising that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of Italy, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

Determined to promote high levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a high level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

Desiring to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydropower can be exploited,

Committed to improve the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

Determined to develop gas and electricity market competition on a broader scale and exploit economies of scale,

Considering that to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

Considering that in order to reduce stress on the state level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

Have decided to create an Energy Community.

TITLE I - PRINCIPLES

1. By this Treaty, the Parties establish among themselves an Energy Community.

Member States of the European Community may become Participants in the Energy Community pursuant to Article 96 of this Treaty.

2. The Energy Community has as its task to organise the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in Article 9 below, in order to:

- Create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,
- Create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,
- Enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,
- Improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,
- Develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

3. For the purposes of Article 2, the activities of the Energy Community shall include:

- (a) The implementation of the *Acquis communautaire* on energy, environment, competition and renewables, as described in Title II below, by the Contracting Parties, adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties.

This activity is hereafter referred to as “The Extension of the *Acquis communautaire*”, and is further described under Title II of this Treaty.

- (b) The setting up of a specific regulatory framework permitting the efficient operation of Network Energy markets across the territories of the Contracting Parties and part of the territory of the European Community, and including the creation of a single mechanism for the cross-border transmission and/or transportation of Network Energy, and the supervision of unilateral safeguard measures. This activity is hereafter referred to as “Mechanism for operation of Network Energy markets”, and is further described under Title III of this Treaty.

- (c) The creation for the Parties of a market in Network Energy without internal frontiers, including the coordination of mutual assistance in case of serious disturbance to the energy networks or external disruptions, and which may include the achievement of a common external energy trade policy.

This activity is hereafter referred to as “The Creation of a Single Energy Market”, and is further described under Title IV of this Treaty.

4. The European Commission shall act as co-ordinator of the three activities described in Article 3.
5. The Energy Community shall follow the *Acquis communautaire* described in Title II below, adapted to both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties, with a view to ensuring high levels of investment security and optimal investments.
6. The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.
7. Any discrimination within the scope of this Treaty shall be prohibited.
8. Nothing in this Treaty shall affect the rights of a Party to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.
9. “Network Energy” shall include the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC¹.

¹ European Community Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, Official Journal of the European Union n° L 176 of 15 July 2003 p. 37 – 56; and European Community Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas, Official Journal of the European Union n° L 176 of 15 July 2003 p. 57 – 78.

TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE

CHAPTER I – GEOGRAPHIC SCOPE

10. The provisions of and the Measures taken under this Title shall apply to the territories of the [Adhering Parties²], and to the territory under [the jurisdiction of³] the United Nations Interim Administration Mission in Kosovo.

CHAPTER II – THE ACQUIS ON ENERGY

11. Each Contracting Party shall implement the Acquis communautaire on energy in compliance with the timetable for the implementation of these measures set out in Annex I of this Treaty.
12. The “Acquis communautaire on energy”, for the purpose of this Treaty, shall mean the European Community Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, the European Community Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and the European Community Regulation 1228/2003/EC of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity⁴.

² Reserve by the Republic of Turkey: to be replaced by « Parties ».

³ General reserve throughout the Treaty by the Republic of Serbia: to be replaced by “interim administration by”.

⁴ Official Journal of the European Union n° L 176 of 15 July 2003 p. 1 – 10

[CHAPTER III – THE ACQUIS ON ENVIRONMENT⁵]

13. Each Contracting Party shall implement the Acquis Communautaire on Environment in compliance with the timetable for the implementation of these measures set out in Annex II of this Treaty.
14. The Parties recognise the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.
15. The Parties recognise the importance of the rules set out in the European Community Directive 96/61/EC of the European Council of 24 September 1996 concerning integrated pollution prevention and control. Each Contracting Party shall endeavour to implement the Directive.
16. After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the Acquis communautaire on environment.
17. The “Acquis communautaire on environment”, for the purpose of this Treaty, shall mean the European Community Council Directive 1985/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and its subsequent amendments as of 31 December 2004, the European Community Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels, the European Community Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, and Article 4(2) the European Community Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds.
18. The provisions of and the Measures taken under this Chapter shall only apply to Network Energy.

⁵ General reserve by the Republic of Turkey on Articles 13, 16 and 17.

CHAPTER IV – THE ACQUIS ON COMPETITION

19. The following are incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,

(ii) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,

(iii) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and [87⁶] of the Treaty establishing the European Community (attached in Annex III).

20. With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that [as from 6 months following the date of entry into force of this Treaty⁷], the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.

CHAPTER V – THE ACQUIS FOR RENEWABLES

21. Each Contracting Party shall provide to the European Commission within one year of entry into force of this Treaty a plan to implement the Directives 2001/77/EC and 2003/30/EC of the European Community on renewable energy sources. The European Commission shall present the plan of each Contracting Party to the Ministerial Council for adoption by simple majority.

⁶ Reserve by the Republic of Turkey on timing of implementation.

⁷ Reserve by the Republic of Turkey on timing of implementation.

CHAPTER VI – COMPLIANCE WITH GENERALLY APPLICABLE STANDARDS OF THE EUROPEAN COMMUNITY

22. Within one year of the entry into force of this Treaty, the Secretariat shall draw up a List of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption by simple majority.
23. The Contracting Parties shall, within one year of the adoption of the List, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.
24. “Generally Applicable Standards of the European Community” shall refer to any technical system standard that is operated within the European Community, necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation, general technical system security standards issued where applicable via CEN, CENELEC and similar normation bodies or as issued by UCTE and Euseegas for common rule setting and business practices.

CHAPTER VII – THE ADAPTATION AND EVOLUTION OF THE ACQUIS

25. For the implementation of this Title, the Energy Community shall adopt Measures adapting the Acquis communautaire described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.
26. [The Energy Community may take Measures to implement amendments to the Acquis communautaire described in this Title, in line with the evolution of European Community law.⁸]

⁸ Reserve by the Republic of Turkey: paragraph 54(f) to be redrafted so as to commit the European Community and to be inserted after Article 26.

TITLE III – MECHANISM FOR OPERATION OF NETWORK ENERGY MARKETS

CHAPTER I – GEOGRAPHIC SCOPE

27. The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and to the territories of the European Community referred to in the paragraph below.
28. As regard the European Community, the provisions of and the Measures taken under this Title shall apply to the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of Italy, and of the Republic of Slovenia. Upon accession to the European Union of an Adhering Party, the provisions of and the Measures taken under this Title shall, without any further formalities, apply also to the territory of this new EU Member State.

CHAPTER II – MECHANISM FOR LONG-DISTANCE TRANSPORTATION OF NETWORK ENERGY

29. The Energy Community shall take Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.

CHAPTER III – SECURITY OF SUPPLY

30. The Parties shall, within one year of the entry into force of this Treaty, adopt security of supply statements [describing in particular diversity of supply, technological security, geographic origin of imported fuels⁹]. The statements shall be communicated to the Secretariat, and shall be available for any Party to this Treaty. They shall be updated every two years. The Secretariat shall give guidance and assistance in this respect.
31. The provision of the above Article does not imply a necessity to change energy policies or purchasing practices.

⁹ Reserve by the Republic of Turkey: to be deleted.

CHAPTER IV – PROVISION OF ENERGY TO CITIZENS

32. The Energy Community shall promote high levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant *Acquis communautaire* on energy.
33. For this purpose, the Energy Community may take Measures to:
 - (a) allow for the universal provision of electricity;
 - (b) foster effective demand management policies; and
 - (c) ensure fair competition.
34. The Energy Community may also make Recommendations to support effective reform of the Network Energy sectors of the Parties, including *inter alia* to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

CHAPTER V – HARMONISATION

35. The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies.

CHAPTER VI – RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

36. Taking account of the advantages of renewable energy sources and energy efficiency on security of supply, environment protection, social cohesion and regional development, the Energy Community may take Measures to foster development in this area.

CHAPTER VII – SAFEGUARD MEASURES

37. In the event of a sudden crisis on the Network Energy market in the territory of a Party, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.
38. Such safeguard measures should cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. They should not distort competition or adversely affect trade in a manner which is at variance with the common interest.
39. The Party concerned should without delay notify these safeguard measures to the Secretariat which shall immediately inform the other Parties.
40. The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request this Party to put an end to, or modify, these safeguard measures.

TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET

CHAPTER I – GEOGRAPHIC SCOPE

41. The provisions of and the measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the Adhering Parties and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.

CHAPTER II – INTERNAL ENERGY MARKET

42. Customs duties and quantitative restrictions on the import and export of Network Energy or all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.

Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants; or the protection of industrial and commercial property. Such restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

43. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.

Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

CHAPTER III – EXTERNAL ENERGY TRADE POLICY

44. The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third States with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market¹⁰.

¹⁰ Reserve by the Republic of Turkey: Article 31 to be inserted as a second paragraph.

CHAPTER IV – MUTUAL ASSISTANCE IN THE EVENT OF DISRUPTION

45. In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third party state, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.
46. Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary Measures in response to the disruption.
47. Within one year of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to the Permanent High Level Group to take interim Measures.

TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY

CHAPTER I - THE MINISTERIAL COUNCIL

48. The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:
- (a) provide general policy guidelines;
 - (b) take Measures; and
 - (c) take Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High Level Group, the Regulatory Board or the Secretariat.
49. The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.
50. The Ministerial Council shall adopt its internal rules of procedure as a Procedural Act.
51. The Presidency shall be held in turn by each [Contracting Party¹¹] for a term of six months in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency. The Ministerial Council shall meet at least once every six months. The meetings shall be prepared by the Secretariat.
52. The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.
53. The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament, to the Parliaments of the Adhering Parties and of the Participants.

¹¹ Reserve by the Republic of Serbia: to be replaced by “Adhering Party”.

CHAPTER II - THE PERMANENT HIGH LEVEL GROUP

54. The Permanent High Level Group shall:

- (a) prepare the work of the Ministerial Council;
- (b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
- (c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
- (d) take Measures, if so empowered by the Ministerial Council; and
- (e) take Procedural Acts, not involving the conferral of tasks, powers or obligations to other institutions of the Energy Community
- (f) discuss the development of the *Acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

55. The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

56. The Permanent High Level Group shall adopt its internal rules of procedure as a Procedural Act.

57. The Presidency shall convene the Permanent High Level Group at a place determined by the Presidency. The meetings shall be prepared by the Secretariat.

58. The Presidency shall chair the Permanent High Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

CHAPTER III – THE REGULATORY BOARD

59. The Regulatory Board shall:

(a) advise the Ministerial Council or the Permanent High Level Group on the details of statutory, technical and regulatory rules;

[(b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them¹²];

(c) take Measures, if so empowered by the Ministerial Council; and

(d) take Procedural Acts.

60. The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the Acquis communautaire on energy. The European Community shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the European Regulators Group for Electricity and Gas (ERGEG).. If a Contracting Party or a Participant has one regulator for gas and one regulator for electricity, the Contracting Party or the Participant shall determine which regulator shall attend a meeting of the Regulatory Board, taking account of its agenda.

61. The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

62. The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The European Commission shall act as Vice-President. The President and the Vice-President shall prepare the draft Agenda.

63. The Regulatory Board shall meet in Athens.

¹² *Reserves by the Republic of Turkey: « any » to be replaced by « all »; and the Regulatory Board to be brought into play only once bilateral discussions have failed.*

CHAPTER IV - THE FORA

64. Fora composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers shall advise the Energy Community.
65. The Fora shall be chaired by a representative of the European Community.
66. The Conclusions of the Fora shall be adopted by consensus. These shall be forwarded to the Permanent High Level Group.
67. The Electricity Forum shall meet in Athens. The Gas Forum shall meet in Istanbul.

CHAPTER V - THE SECRETARIAT

68. The Secretariat shall:
 - (a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora;
 - (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council; and
 - (c) review and assist in the coordination by the European Commission of the donors' activity in the territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors;
 - (d) carry out other tasks conferred to it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and
 - (e) take Procedural Acts.
69. The Secretariat shall comprise a Director and such staff as the Energy Community may require.
70. The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

71. In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interest of the Energy Community.
72. The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.
73. The seat of the Secretariat shall be in Vienna.

CHAPTER VI – BUDGET

74. Each Party shall contribute to the budget of the Energy Community as determined in Annex IV and as may be reviewed every five years on request of any Party by a Procedural Act of the Ministerial Council.
75. The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditures of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.
76. The Director of the Secretariat shall implement the budget in accordance with the Procedural Act pursuant to Article 75. He shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

TITLE VI – DECISION MAKING PROCESS

CHAPTER I – GENERAL PROVISIONS

77. Measures may take the form of a Decision or a Recommendation.
- (a) A Decision is legally binding in its entirety upon those to whom it is addressed.
 - (b) A Recommendation shall have no binding force.
78. Save as provided in Article 81, each Party shall have one vote.
79. The Ministerial Council, the Permanent High Level Group or the Regulatory Board can deliberate only if two third of the Parties are represented.

CHAPTER II – MEASURES UNDER TITLE II

80. Under Title II, the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to its adoption.
81. Each Contracting Party shall have one vote.
82. The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a majority of the votes cast.

CHAPTER III – MEASURES UNDER TITLE III

83. Under Title III, the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures on a proposal from a Party or the Secretariat.

84. The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a two third majority of the votes cast, including a positive vote of the European Community.

CHAPTER IV – MEASURES UNDER TITLE IV

85. Under Title IV, the Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures on a proposal from a Party.
86. The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures by unanimity.

CHAPTER V – PROCEDURAL ACTS

87. A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including delegating power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.
88. Save as provided in Article 89, Procedural Acts are adopted in compliance with the Decision Making Process under Chapter III of this Title.
89. The Procedural Act appointing the Director of the Secretariat under Article 70 shall be adopted by simple majority on proposal from the European Commission. The Procedural Acts on budgetary matters under Articles 74 and 75 shall be taken by unanimity on proposal from the European Commission. The Procedural Acts conferring powers to the Regulatory Board under Article 48(c) shall be taken by unanimity on proposal from a Party or the Secretariat.

TITLE VII - IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT¹³

90. The Parties shall implement Decisions addressed to them in their domestic legal system within a period specified in the Decision.
91. A failure by a Party to abide by a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. The Secretariat may be approached by private bodies with complaints to that effect.

The Party in question may make observations upon a request or a complaint.

92. The Ministerial Council may determine the existence of a breach by a Party of its obligations. It decides:
- a) with simple majority if the breach relates to Title II
 - b) with two-third majority if the breach relates to Title III
 - c) with unanimity if the breach relates to Title IV.

The Ministerial Council may decide subsequently by simple majority to revoke any decisions taken under this Article.

93. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights, exclusion from meetings or mechanisms of this Treaty.

The Ministerial Council may decide subsequently by simple majority to revoke any measures taken under this Article.

94. When taking decisions referred to in the two above Articles, the Ministerial Council shall act without taking into account the votes of the representative of the Party in question.

¹³ *Reserve by the Republic of Turkey: the dispute settlement procedure to be before the Court of Justice of the European Communities.*

TITLE VIII - INTERPRETATION

95. The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice of the European Communities or the Court of First Instance. Where no interpretation from these Courts is available, the Ministerial Council, which may delegate this task to the Permanent High Level Group, shall give guidance in interpreting this Treaty. Such guidance cannot prejudice any interpretation of the *Acquis communautaire* by the Court of Justice of the European Communities or the Court of First Instance at a later stage.

TITLE IX – PARTICIPANTS AND OBSERVERS

96. Upon its request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High Level Group and the Regulatory Board under the conditions laid down in Articles 49, 55 and 60 as Participant, and be allowed to participate in the discussions of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.
97. Upon its request presented to the Ministerial Council within six months of the entry into force of this Treaty, Moldova shall be accepted as an Observer to this Treaty. Upon the reasoned request of a neighbouring third party State, the Ministerial Council may accept by unanimity this State as an Observer. Observers may attend the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora without participating in the discussions.

TITLE X - DURATION

98. This Treaty is concluded for 10 years from the date of entry into force. Its duration may be extended by a unanimous decision of the Ministerial Council. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties of the Energy Community.
99. Any party may withdraw from this Treaty with six months notice, addressed to the Secretariat.
100. Upon accession to the European Community of an Adhering Party, this party shall become a Participant under Article 96.

TITLE XI – REVISION AND ACCESSION

101. The Ministerial Council, may, by unanimity of its Members:
- (i) amend the provisions of Title I to VII of this Treaty;
 - (ii) decide to implement other parts of the *acquis communautaire* related to Network Energy;
 - (iii) extend this Treaty to other energy products and carriers or other essential network infrastructures; and
 - (iv) agree on the accession to the Energy Community of a new Party.

TITLE XII - FINAL AND TRANSITIONAL PROVISIONS

102. The rights and obligations arising from agreements concluded by a Contracting Party before the [signature¹⁴] of this Treaty, shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate [measures¹⁵] to eliminate the incompatibilities established[, no later than one year¹⁶] after the entry into force of this Treaty.
103. All obligations under this Treaty are without prejudice to existing legal obligations of the Parties under the Treaty establishing the World Trade Organisation.
104. Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of accession negotiations to the European Union shall not be affected by this Treaty.
105. Until the adoption of the Procedural Act pursuant to Article 51, the order for holding the Presidency shall be the one defined by the 2003 Athens Memorandum of Understanding¹⁷.
106. This Treaty is drawn up in English, this being the authentic text.

¹⁴ *Reserve by the Republic of Bulgaria: to be replaced by “entry into force”.*

¹⁵ *Reserve by the Republic of Turkey: to be replaced by “efforts”.*

¹⁶ *Reserve by the Republic of Turkey: to be deleted.*

¹⁷ Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market, signed in Athens on 8 December 2003.

107. This Treaty shall be approved by the Parties in accordance with their internal procedures.

This Treaty shall enter into force the first day of the month following the date on which the European Community and six Contracting Parties have notified the completion of the procedures necessary for this purpose.

Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

In witness thereof the duly authorised representatives have signed this Treaty.

ANNEX I

TIMETABLE FOR THE IMPLEMENTATION OF THE EC DIRECTIVES N° 2003/54 AND 2003/55, AND THE EC REGULATION N° 1228/2003, OF 26 JUNE 2003

1. Subject to paragraph 2 below and Article 25 of this Treaty, each Contracting Party shall implement the EC Directives n° 2003/54 and 2003/55, and the EC Regulation n° 1228/2003, of 26 June 2003 within twelve months of the entry into force of this Treaty.
2. Each Contracting Party must ensure that the eligible customers are:
 - (i) from 1st January [2008¹⁸], all non-household customers; and
 - (ii) from 1st January 2015, all customers.

¹⁸ *Reserve by the Republic of Turkey: to be replaced by 2010.*

ANNEX II

TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT

- 1; [Each contracting party shall implement the Directive 85/337/EEC on the assessment of certain public and private projects on the environment, and its subsequent amendments as of 31 December 2004, on the entry into force of this treaty.^{19 20}]
2. Each contracting party shall implement the Directive 1999/32/EC on reduction of sulphur content of certain liquid fuels by 31st December [2011²¹].
3. Each contracting party shall implement the Directive 2001/80/EC on large combustion plants by 31st December [2017²²].
4. [Each contracting party shall implement Article 4(2) of the Directive 79/409/EEC on the conservation of wild birds on the entry into force of this treaty.^{23 24}]

¹⁹ Reserve by the Republic of Turkey.

²⁰ Pending reserve by the Republic of Serbia to be confirmed or withdrawn within two weeks, after having examined the amendments to the Directive.

²¹ Reserve by the Republic of Serbia: to be replaced by 2015.

²² Reserve by the Republic of Turkey: to be replaced by 2020.

²³ Reserve by the Republic of Turkey.

²⁴ Reserve by the Republic of Serbia: timing of implementation to be extended by two years.

ANNEX III

Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the common market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
 - (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

ANNEX IV

CONTRIBUTION TO THE BUDGET

Parties	Contribution in percentage
European Community	91,2 %
Republic of Albania	0,1 %
Republic of Bulgaria	1 %
Bosnia and Herzegovina	0,3 %
Republic of Croatia	0,5 %
former Yugoslav Republic of Macedonia	0,1 %
Republic of Montenegro	[0,2 ²⁵] %
Romania	2,1 %
Republic of Serbia	[0,6 ²⁶] %
Republic of Turkey	3,8 %
United Nations Interim Administration Mission in Kosovo	0,1 %

²⁵ *The Republic of Montenegro and the Republic of Serbia accept the figure of 0,8% for both Republics but reserve the right to modify the repartition of this percentage between them by mutual consent within 15 days.*

²⁶ *Same reserve as in the above footnote.*